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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/625,056	07/22/2003	Ling Yuk Cheung	6100-065-999	8404

20583 7590 12/22/2004

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222 EAST 41ST ST
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EXAMINER

SRIVASTAVA, KAILASH C

ART UNIT	PAPER NUMBER
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1651

DATE MAILED: 12/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/625,056	CHEUNG, LING YUK	
	Examiner	Art Unit	
	Dr. Kailash C. Srivastava	1651	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 October 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 33-53 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 33-53 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(c).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>13.10.2004</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Applicant's Response and amendment filed October 13, 2004 to the Office Action mailed August 18, 2004 is acknowledged and entered.

CLAIMS STATUS

2. Claims 1 to 32 have been cancelled.
3. Claims 33-53 have been added.
4. Claims 33 to 53 are pending.
5. Cancelled Claims 16, 18, 17, 19, 22 and 23 correspond to newly presented Claims 33, 34, 35, 36 and 43 respectively. Subject matter for cancelled Claims 20 and 21 is presented in newly added Claims 37-42. Newly presented Claims 35, 37-39, and 43-51 are dependent claims, depending directly or indirectly from Claim 33. Additionally, Cancelled Claims 18-19 correspond to newly presented Claims 34 and 36 respectively. Claims 40-49 and 52-53 are dependent claims, depending directly or indirectly from Claim 34.

Restriction/Election

6. Applicant's election with traverse of Group III, encompassing canceled Claims 16, 18, 20, 22 and 31 corresponding to newly presented Claims 33, 35, 37-39 and 43-51, and as election of species, *Saccharomyces cerevisiae* as the yeast and strains 2. 628, IFF1037, IFF11021, IFF11051, IFF11345 or IFF11211 and AS2.982 in response filed 13 October 2004 is acknowledged and entered. Applicant's traversal is on the grounds that the newly added Claims 33-53 should be examined together in one invention because all the claims belong in the same group and there is no additional burden on the examiner to search the subject matter presented in Claims 33-53.

Applicant's arguments and assertion that the newly presented Claims 33-53 read on elected species (See, Remarks, Page 12, Lines 15 to 30) in response filed 13 October 2004 have been fully considered and are persuasive. Examiner hereby withdraws the restriction requirement in the Office Action mailed 18 August 2004 with respect to invention Groups III-IV. Applicant has also cancelled claims engrouped in invention of Groups I-II and V without presenting any traverse. Therefore, Examiner also withdraws the restriction requirement in Office Action mailed 18 August 2004 with regard to invention engrouped in Groups I-II and V encompassing cancelled Claims 1-15 and 24-30.

7. Claims 33-53 are examined on the merits.

Information Disclosure Statement

8. Applicant's Information disclosure statement (i.e., IDS) filed on 13 October 2004 under 37 C.F. R. §1.56 and §1.97 has been made of record and considered.

Priority

9. Applicants' claim for Domestic priority under 35 U.S.C. §121 is acknowledged.

Claims Objection

10. In claim 34, the units for amplitude are recited as only "mV", rather than "mV/Cm". Appropriate correction is required.

Double Patenting

11. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

12. Claims 33-53 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-20 of U.S. Patent No. 6, 416,982 B1. Although, conflicting claims are not identical, and are drawn to a composition, they are patentably not distinct from the methods claims of the instant Non-Provisional U.S. Patent application Number 10/625,056, because claims 1-20 of the referenced patent are drawn to obtain a composition comprising essentially the same steps and the same ingredients as claimed in the cited method claims of instant Non-Provisional U.S. Patent application Number 10/625,056. It would have been obvious to one of ordinary skill in the art to add instantly claimed poultry manure in the composition disclosed in the referenced U.S. Patent Number 6, 416,983 B1 with the plurality of yeast cells component recited in the claimed invention, since it is well accepted in the fertilizer art that waste material (e.g., garbage, municipal sludge, manure from farm animals/poultry) components are commonly and beneficially employed in fertilizer compositions.

13. Claims 33-53 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-12 of U.S. Patent No. 6, 416,983 B1. Although, conflicting claims are not identical, and are drawn to a composition, they are patentably not distinct from the methods claims of the instant Non-Provisional U.S. Patent application Number 10/625,056, because claims 1-12 of the referenced patent are drawn to obtain a composition comprising essentially the same steps and the same ingredients as claimed in the cited method claims of instant Non-Provisional U.S. Patent application Number 10/625,056. It would have been obvious to one of ordinary skill in the art to add instantly claimed poultry manure as replacement for claimed **garbage** component in the composition disclosed in the referenced U.S. Patent Number 6, 416,983 B1 supplementing the plurality of yeast cells component recited in the claimed invention since it is well accepted in the fertilizer art that waste material (e.g., garbage, municipal sludge, manure from farm animals/poultry) components are commonly and beneficially employed in fertilizer compositions.

14. Claims 33-53 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-12 of U.S. Patent No. 6,596,273 B2. Although, conflicting claims are not identical, and are drawn to a composition, they are patentably not distinct from the methods claims of the instant Non-Provisional U.S. Patent application Number 10/625,056, because claims 1-12 of the referenced patent are drawn to obtain a composition comprising essentially the same steps and the same ingredients as claimed in the cited method claims of instant Non-Provisional U.S. Patent application Number 10/625,056. It would have been obvious to one of ordinary skill in the art to add instantly claimed poultry manure as replacement for claimed **swine manure** component in the composition disclosed in the referenced U.S. Patent Number 6,596,273 B2 supplementing the plurality of yeast cells component recited in the claimed invention, since it is well accepted in the fertilizer art that waste material (e.g., garbage, municipal sludge, manure from farm animals/poultry) components are commonly and beneficially employed in fertilizer compositions.

15. Claims 33-53 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-15 and 17-20 of U.S. Patent No. 6,761,886 B2. Although, conflicting claims are not identical, and are drawn to a composition, they are patentably not distinct from each other, because claims 1-15 and 17-20 of the referenced patent are drawn to obtain a composition comprising essentially the same steps and the same ingredients as claimed in the cited method claims of instant Non-Provisional U.S. Patent application Number 10/625,056. It would have been obvious to one of ordinary skill in the art to add instantly claimed poultry manure as replacement for the claimed **cattle manure** component in the composition disclosed in the referenced U.S. Patent Number 6,761,886 B2 supplementing the plurality of yeast cells component recited in the claimed invention, since it is well

accepted in the fertilizer art that waste material (e.g., garbage, municipal sludge, manure from farm animals/poultry) components are commonly and beneficially employed in fertilizer compositions.

16. Claims 33-53 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-12 of U.S. Patent No. 6, 800,466 B2. Although, conflicting claims are not identical, and are drawn to a composition, they are patentably not distinct from the methods claims of the instant Non-Provisional U.S. Patent application Number 10/625,056, because claims 1-12 of the referenced patent are drawn to obtain a composition comprising essentially the same steps and the same ingredients as claimed in the cited method claims of instant Non-Provisional U.S. Patent application Number 10/625,056. It would have been obvious to one of ordinary skill in the art to add instantly claimed poultry manure as replacement for claimed **sludge** component in the composition disclosed in the referenced U.S. Patent Number 6, 800,466 B2 supplementing the plurality of yeast cells component recited in the claimed invention, since it is well accepted in the fertilizer art that waste material (e.g., garbage, municipal sludge, manure from farm animals/poultry) components are commonly and beneficially employed in fertilizer compositions.

17. Claims 33-53 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 52-53, 56-59 and 61-67 of Co-pending non-provisional U.S. Patent Application Number 10/192,805. Although, conflicting claims are not identical, they are patentably not distinct from each other, because claims 52-53, 56-59 and 61-67 of the referenced Co-pending non-provisional U.S. Patent Application Number 10/192,805 are drawn to a method comprising essentially the same steps and the same ingredients as claimed in the cited method claims of instant Non-Provisional U.S. Patent application Number 10/625,056. It would have been obvious to one of ordinary skill in the art to add instantly claimed poultry manure in the method disclosed in the co-pending non-provisional U.S. Patent Application Number 10/192,805 supplementing the plurality of yeast cells component recited in the claimed invention, since it is well accepted in the fertilizer art that waste material (e.g., garbage, municipal sludge, manure from farm animals/poultry) components are commonly and beneficially employed in fertilizer compositions.

18. Claims 33-53 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 29-32 and 37-55 of Co-pending non-provisional U.S. Patent Application Number 10/192,807. Although, conflicting claims are not identical, they are patentably not distinct from each other, because method Claims 29-32 and 37-55 of the referenced Co-pending non-provisional U.S. Patent Application Number 10/192,807 are drawn to obtain a method comprising essentially the same steps and the same ingredients as claimed in the cited method claims of instant Non-Provisional U.S. Patent application Number 10/625,056. It would have been obvious to one of

ordinary skill in the art to add instantly claimed poultry manure as replacement for the claimed garbage component in method disclosed in the co-pending non-provisional U.S. Patent Application Number 10/192,807 supplementing the plurality of yeast cells component recited in the claimed invention, since it is well accepted in the fertilizer art that waste material (e.g., garbage, municipal sludge, manure from farm animals/poultry) components are commonly and beneficially employed in fertilizer compositions.

19. Claims 33-53 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 29-49 of Co-pending non-provisional U.S. Patent Application Number 10/625,092. Although, conflicting claims are not identical, they are not patentably distinct from each other because methods claims 29-49 of the referenced non-provisional U.S. Patent Application Number 10/625,092 are drawn to a method comprising the same ingredients and essentially the same steps as claimed in the recited method claims of instant Non-Provisional U.S. Patent application Number 10/625,056. It would have been obvious to one of ordinary skill in the art to add instantly claimed poultry manure as replacement for the claimed swine manure in the method disclosed in the co-pending U.S. Patent Application Number 10/192,092 supplementing the plurality of yeast cells component recited in the claimed invention, since it is well accepted in the fertilizer art that waste material (e.g., garbage, municipal sludge, manure from farm animals) components are commonly and beneficially employed in fertilizer compositions.

Claim Rejections - 35 U.S.C. § 112

20. The following is a quotation of the second paragraph of 35 U.S.C. § 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

21. Claims 29-49 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

- Claims 33-36 are not adequately defined because they lack a recitation of operative amounts and/ or proportions of the claimed ingredients, i.e., each of plurality of yeast cells.
- As presently drafted, Claims 34 and 36 are rendered unclear because it is not clear whether in step II the poultry manure is added to any one of the cultured yeast cells cultured according to step I, or each one of the yeast cells cultured in step I are first mixed together and subsequently the poultry manure is mixed into the said mixture of cultured yeast cells.
- Claims 38 and 41 are rendered unclear and indefinite because of the recitation, "inorganic substrate component". The metes and bounds of the recitation "inorganic substrate component"

as presently drafted in Claims 38 and 41 are not defined. Applicant should define the meets sand bounds of recitation "inorganic substrate component".

- Except for the language, "mixing yeast cells", as presently drafted, Claim 34 does not in any way seem to advance the limitations already recited in Claim 33, Lines 9 through 37. Lines 3-31 in Claim 34 recite the same conditions for culturing plurality of yeast cells as those recited in Claim 33, Lines 9 through 37.
- As presently drafted, Claim 36, Lines 1-14 does not in any way seem to advance the limitations already recited in Claim 35, Lines 4 through 18 because Claim 36, Lines 1-14 recite the same conditions for culturing plurality of yeast cells as those recited in Claim 35, Lines 4 through 18.
- As presently drafted, Claims 40-42 do not in any way seem to advance the limitations already recited in Claims 37-39, because Claims 40-42 recite the same ingredients and methods as those recited in Claims 37 through 39.

All other claims depend directly or indirectly from the rejected claims (e.g., 33) and are, therefore, also rejected under 35 U.S.C. §112, second paragraph for the reasons set forth above.

Conclusion

22. No Claims are allowed for aforementioned reasons.

23. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Kailash C. Srivastava whose telephone number is (571)-272-0923. The examiner can normally be reached on Monday to Thursday from 8:10 A.M. to 6:45 P.M. (Eastern Standard or Daylight Savings Time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Wityshyn, can be reached on (571)-272-0926 Monday through Thursday. The fax phone number for the organization where this application or proceeding is assigned is (703)-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

Kailash C. Srivastava, Ph.D.
Patent Examiner
Art Unit 1651
(571)-272-0923

December 20, 2004

Ralph Gitomer

RALPH GITOMER
PRIMARY EXAMINER
GROUP 1200